COMMUNIQUÉ

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September, 2005

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President's Report

Garth H. Smorang, Q.C.
President

I begin my first report since being elected President on a very sad note.

As most of you know, Kerry Pearlman, a Bencher of the Law Society, passed away on September 9, 2005. Kerry had attended our Benchers' meeting earlier that day at Clear Lake. As usual, he was in good spirits and at least once during the meeting had the entire room in stitches.

Kerry is my classmate and I have known him for 26 years. Our profession has lost a dedicated volunteer, an excellent advocate, a mentor and a role model. I will miss him.

One of my first tasks after being elected President in May was to attend the semi-annual meeting of the Federation of Law Societies in Banff. One of the speakers described the role of a Law Society as akin to being a solicitor. He described us as "risk managers in the public interest". I think that is a good way to look at the Society's mandate. We manage risk.

We begin managing risk through Bar Admission - the CPLED program. Our goal at the outset is to ensure that lawyers called to the Bar are properly qualified and have gained the requisite experience to practise law safely and effectively.

We have in place an effective and efficient complaints and discipline process run by staff and volunteer lawyers. When lawyers are not practising within the Rules and the Code, we act.

We offer errors and omissions insurance and we administer a reimbursement fund to protect the public when, sometimes, lawyers steal money.

We employ auditors who administer a spot audit program designed not only to promote and ensure compliance with our rules, but sometimes to detect irregularities in trust accounts and worse. The major defalcation discovered earlier this year is a good example of the spot audit system at work.

In managing these risks, we also have to be mindful of the balance between the public interest and our members' expectations that their honesty and compliance with the rules should be presumed, and that they should be allowed to practise law relatively free from ongoing interference by their regulatory body.

It's a tough balance and one that must be weighed and struck frequently. We must keep in mind that our right to self-govern, free from government involvement, cannot be taken for granted.

In England and Wales, wholesale regulatory changes have now been enacted which have effectively taken from the profession the right to govern itself. In speaking at a Legal Services Reform Conference in March 2005, Lord Falconer, announcing sweeping changes, said of the existing system:

> "The system for complaints handling was ineffective. In many cases people didn't know who to complain to. And when they did, people told us it was too slow and too complex. It was clear people lacked confidence in a complaints regime that was too closely tied to the providers. There was a lack of transparency and accountability. People told us they weren't confident in a system that was self-regulated, and they felt that enforcement of rules was poor."

As the work of the Law Society is done on a day to day basis, be it a Complaints Investigation Committee meeting or a meeting of the Practice and Ethics Committee, now tasked to consider reforming our Code of Professional Conduct, we must always keep in mind that our mandate as a Society, our reason for being, is to ensure that the public is well-served by a competent legal profession.

The work done by the Law Society staff, Benchers and volunteers is important and necessary work. I am happy to be part of the process and I look forward to working with many of you over the coming year.

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Benchers' Meeting Highlights
"Once Upon a Time in the West"

Allan Fineblit, Q.C.
Chief Executive Officer

Where is that from? It keeps going around in my head as I write about the September 9, 2005 Benchers' meeting at Clear Lake, which was held in conjunction with the Western Manitoba Bar Association's Annual Meeting. Marilyn Billinkoff thinks it's the title of a spaghetti western. I think it comes from a song by The Doors but I don't know which one. Anyway…once upon a time in the west the Benchers met and here are the highlights:

- Garth Smorang reported on his summer as Law Society President (it came across mostly as golf and fishing with the odd committee meeting thrown in.)

- Newly elected Manitoba Bar President, John Stefaniuk, attended the Benchers' meeting and brought greetings from the MBA. John noted the large number of successful collaborations between the Bar Association and the Law Society.

- The Benchers approved in principle (final approval is slated for October) a rule amendment clarifying that limited liability partnerships must include the phrase "Limited Liability Partnership" or "LLP" in their advertising.

- The Benchers reviewed a major monitoring report on the Insurance Department. Our claims experience continues to be excellent. The Insurance Department now administers the Reimbursement Fund and, as such, is dealing with a multitude of claims arising from a recent theft.

- Two policy issues were decided arising from the insurance monitoring

report. The first one has to do with how we insure our Reimbursement Fund. Currently, the Law Society covers the first $1 million of losses and buys insurance for an additional $10 million. The marketplace for that insurance is small and our rates seem to go up dramatically every year, regardless of our loss experience. The Benchers approved a plan to explore a reciprocal insurance model for the Reimbursement Fund similar to what we have for errors and omissions insurance through the Canadian Lawyers Insurance Association.

- The second policy issue the Benchers dealt with was what to do about our Reimbursement Fund reserves. We expect that a major theft we are investigating will entirely wipe out our $1 million reserve. The money to build the reserve back will have to come from our members in one way or another. The Benchers approved a creative model, taking advantage of the excess surplus in the Insurance Fund reserves.

  It works like this. The Insurance Fund will set aside $1 million of reserves to backstop the Reimbursement Fund. This will allow the Reimbursement Fund to gradually build back its reserves over many years instead of all at once. The result will be a modest increase in the Reimbursement Fund levy instead of a giant one next year.

Please note that the Benchers' meeting on October 27, 2005 will start at 10:00 a.m. instead of the usual 12:30 p.m. Members are always welcome to attend and Garth will even let you make a speech or two if you are so inclined.

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Notice of Benchers' Meeting

The next meeting of the Benchers of The Law Society of Manitoba will be held on Thursday, October 27, 2005 at 10:00 a.m. in the Society's classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

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Allan's Odds and Ends

Allan Fineblit, Q.C.
Chief Executive Officer

- Congratulations to our new Student Bencher, **Andrew Loewen**, who is articling with Fillmore Riley LLP.

- Welcome back to the Law Society to **Karen Dyck** from her maternity leave. Karen will act as the Law Society's Competence Counsel. Watch for her stuff in your In Box.

- Fifty-nine students started the second CPLED program (the new prairie bar admission course) on September 6, 2005. It is always a challenge to create something new, and even more so when it is a collaborative effort of three law societies (lots of prima donnas like me to keep happy!). The amazing **Sheila Redel** completed her two year secondment as the first director of the CPLED program, having delivered everything she promised on time and on budget.

- Recently we created a new rule intended to address lawyers being used by devious clients to facilitate money laundering. The "no cash" rule is in the process of being passed by all law societies in Canada. Some of you have raised questions of application, or concerns about some details, and I have convened a national working group to try to address those issues. It seems fairly obvious to me, but each law society has been asked to notify its members that "deliberate or careless breach of the rule will be treated seriously and may result in sanctions, including disbarment". Consider yourselves notified.

- Congratulations to **Mario Santos** who has been appointed Chair of the new Legal Aid Management Council. The Law Society has three representatives on that Council. Thanks to **Herb Peters**, **Chris Martin** and **Marietta Pellettieri** for agreeing to take on that challenge.

- Thanks also to Benchers **Jon van der Krabben** and **Jennifer Cooper** for agreeing to sit as Law Society representatives on the Manitoba Law Foundation Board, joining Past President **Doug Finkbeiner** as the Law Society representatives on that Board.

- More fast lawyers…add the name of **Mike Styczen** to those who ran for a good cause on Fathers Day.

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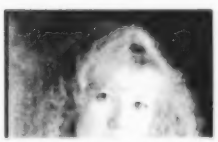
Report of the Equity Ombudsperson
Stories from my Ontario Counterpart

Brenlee Carrington Trepel
Equity Ombudsperson



Strict confidentiality is partly responsible for the effectiveness of the Equity Ombudsperson service for law societies. Names of people who use the service are never revealed to anyone, including the law societies

themselves, nor is identifying information given when annual reports are written.

My counterpart in Ontario, Cynthia Peterson of The Law Society of Upper Canada, whose title is Discrimination and Harassment Counsel (DHC), is able to reveal more details about her contacts than I am without endangering their confidentiality because, as you know, Ontario has more than twenty times the number of lawyers as has Manitoba.

So…for everyone who wonders what sort of calls Equity Ombudspeople might receive, here's a sample from Ontario.

Some readers may think that these examples are sensationalistic or would never happen here in Manitoba. I'm sorry to say that is not the case.

This information is quoted directly from Cynthia Peterson's 2004 Ontario report:

- A female lawyer of colour complained about a white female lawyer who directed a racist slur at her in the presence of other parties.
- A receptionist at a law firm complained that she was terminated when she advised her new employer that she would be taking a maternity leave. The employer told her that he would not have hired her if he had known she was pregnant.
- A secretary in a law firm, who has fibromyalgia, complained that her boss (a lawyer) was refusing to accommodate her disability and was violating confidentiality with respect to her medical condition in the workplace.
- A female associate in a small law firm was given a good performance review and was told that she would be assigned a full-time secretary to assist her with her growing practice. After she announced that she was pregnant, her employer advised her that she would not be assigned a secretary.
- A lesbian secretary in a law firm complained that lawyers in the office began harassing her after she announced that she intended to marry her same-sex partner.
- A female associate complained about a male partner who regularly shouted at her, shook his fist in anger, called her "lazy" and "stupid" and said she must have "slept her way to getting hired" at the firm.
- A man complained on behalf of a female friend, an impoverished woman with a drug addiction, who was charged with drug-related offences and whose male lawyer agreed to act for her pro bono if she performed sexual acts on him.

- A number of lawyers with various disabilities (eg. hearing impairment, diabetes, depression, anxiety) complained that their employers were failing to accommodate them.

- A number of lawyers with child care obligations, including some with seriously ill children, complained that their employers were refusing to accommodate their family status by making flexible work arrangements for them.

- A senior female associate in a private law firm complained that male associates were given better work and had more advancement opportunities within her firm. She also complained about differential partnership structures within her firm that disadvantaged women partners relative to male partners.

- A female litigator of colour working in a government office complained about systemic racial discrimination in her workplace, consisting primarily of preferential treatment of white lawyers in her office (who were given better files and more advancement opportunities).

- A female lawyer working in a government office complained that she was given substandard work after her return from pregnancy/parental leave. She felt she was being put on a "mommy track" that would stifle her advancement opportunities within her department.

- A female client complained that her male lawyer always insisted on meeting her outside his office, constantly told her how attractive she was, and put his hands around her waist while they were alone in an elevator.

- A female lawyer complained about a male opposing counsel who, in front of their respective clients, called her "uppity" and said that the "women's liberation movement" had made life difficult for men like him.

- A female associate in a law firm returned from maternity leave and was told that she would not be receiving a salary increase. Other male associates in the office all received increases.

- A secretary in a law firm complained that one of the male lawyers in her office repeatedly tried to hold her hand, stroked her hair, and frequently commented on her appearance.

- A female lawyer complained about harassment by a male lawyer in her office with whom she had had a consensual intimate/sexual relationship. After she ended the relationship, he repeatedly insulted and embarrassed her in front of clients and physically shoved her while in the office.

- A woman of colour complained that her lawyer had made a racially

derogatory remark.

- A man of colour complained that his lawyer treated him in a dismissive and demeaning manner (eg. ordering him to "sit down" in front of other parties, cutting him off when he spoke, patronizing him, etc.) that was different from the way the man observed the lawyer interacting with other white clients.

- A female lawyer of colour complained about the conduct of a white male lawyer who snapped at her in anger, called her an obscene name in front of other parties, told her that she was an example of why "women shouldn't practise law" and called her "an Afro ethnic".

- A secretary in a legal clinic complained that she was pressured not to take a year of pregnancy/parental leave and then was demoted on the day that she returned to work from her leave.

- A lesbian articling student in a law firm complained that associates in the firm started asking her unwelcome and intrusive personal questions about her sexual practices after she came out to them. When she expressed her discomfort regarding their inquiries, they began to criticize her work and indicated to partners that she should not be hired back.

Here in Manitoba, just contact me if you'd like assistance with implementing a respectful workplace policy, a leave policy or an accommodation policy. If you'd like confidential, neutral assistance with any harassment or discrimination concerns, just let me know. I can also come speak at your office and I mediate respectful workplace issues as well. Please contact me confidentially in Winnipeg at 942-2002, or toll-free from anywhere in Manitoba at 1-866-771-2002, by mail at P.O. Box 2555 - Station Main, Winnipeg, R3C 4B3, by e-mail at brenleecarrington@shaw.ca or by fax at 474-1161. All contacts are strictly confidential and all services are provided free of charge.

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Legal Assistants - What are the Limits?

C. Kristin Dangerfield
Senior General Counsel

Your client's house deal is closing. You receive a letter setting forth a series of trust conditions signed by a legal assistant. When you attempt to contact the lawyer responsible for the file to clarify one of the trust conditions, the legal assistant advises that she is handling the matter, and that there is no need for you to speak with the lawyer. Is this acceptable?

Subject to certain restrictions, Practice Direction 96-01 allows a legal assistant to perform tasks under the supervision of a lawyer, providing that the lawyer maintains a direct relationship with the client and assumes professional responsibility for the work. One of those restrictions prevents a paralegal from either giving or receiving undertakings. This includes trust conditions.

A legal assistant can, however, sign a letter containing trust conditions at the direction of, and under the supervision of the lawyer responsible for the file. In fact, this may even occur in circumstances where the lawyer is not physically present in the office (for example, is away on holidays) but has provided the assistant with instructions as to the trust conditions which are to be imposed. It is that lawyer's obligation to ensure that the legal assistant is competent to perform the work that he or she is doing. It is obviously in the lawyer's interest to do so, in that it is his or her insurance, and hence his or her deductible, which will provide protection to the client in the event of an error.

While a legal assistant may be fully competent to handle a real estate transaction, it does not detract from the lawyer's obligation to communicate with both the client and opposing counsel. It is therefore critical that any communications identify the responsible lawyer, and that those who wish to speak with him or her be given the opportunity to do so. Staff should be directed to convey any such requests to the responsible lawyer, whose obligation it remains to respond, with reasonable promptness, to all professional letters and communications with other lawyers that require an answer, in accordance with Chapter 16, Commentary 6 of the Code of Professional Conduct.

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A Great Speech

Allan Fineblit, Q.C.
Chief Executive Officer

I have to make a speech next week and since speech-making is something I get asked to do fairly often, I keep a folder of speaking notes of all my great speeches. It's a very thin folder. Occasionally though, I can use my old notes as the basis for a new speech. I'm not good at reading a speech from text, so I tend to rely on a rough set of notes. Sometimes this makes me sound relaxed and informal, but usually it just makes me sound confused and disjointed If I have something really important to say, I will try to write it out in full (okay, this has never actually happened, but it could).

The topic of my speech is how to publicly present complicated issues, like the independence of the legal profession, in a way that doesn't make lawyers look self-interested. There are quite a few issues like independence that aren't easy

to explain without sounding pedantic. Solicitor/client privilege is an example. It is often seen as a lawyer's privilege…a special right that the legal profession has given itself that isn't available to anyone else. It's a difficult concept to explain that the privilege belongs to the client, not the lawyer, and is intended to ensure unfettered access to legal advice and assistance.

Once a month I get a letter from some unhappy complainant who tells me that the reason we have tossed their complaint about their lawyer is because we are a bunch of lawyers protecting each others backsides. I struggle with how to effectively deliver the message that an independent legal profession is the cornerstone of all our democratic institutions and is an essential component of an independent judiciary.

Sometimes I have to make the point that adequate funding for Legal Aid isn't about lining lawyers' pockets, but about providing access to justice for those who need it most.

Recently the Federation of Law Societies of Canada prepared a detailed submission to a parliamentary committee about right-to-counsel issues and the anti-terrorism legislation. One of our recommendations will be to exempt bail money and legal fees from assets that can be frozen under that legislation. We fussed for some time about this point because we were concerned that all of our other important right-to-counsel recommendations would be lost if this issue were wrongly perceived as self-interested.

I think the reason that it is so difficult to get these points across effectively is that we are able to take for granted our democratic institutions. The public takes for granted that it will be able to obtain independent counsel not beholden to the state. They take for granted an independent judiciary with security of tenure. They take for granted the rule of law and our constitutional and common-law protections.

Recently two of my pals, Darryl Pink and Bill Goodridge, travelled to Uganda and Ethiopia to work with the local Bars in developing democratic institutions. They went to Uganda first. They told me they were shocked by a group of lawyers they met who had been judges until the government changed and they found themselves out on the street. They told me that Ethiopia was even worse.

The challenge we face in Manitoba is that our citizens take what they have for granted. Unless you understand the foundations that underlie the important principles of an independent legal profession, it is easy to see them as principles of self-interest. If you are not living in a fragile democracy like Uganda or Ethiopia, the principles of right-to-counsel and an independent Bar won't instantly resonate. They require a serious analysis.

I'm thinking that I had better write my speech out word for word. Actually… I'm thinking that maybe I just did.

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Fighting Back Against Fraud
The Risks in Real Estate

This article was written by David J. Bilinsky, Practice Management Advisor with the Law Society of British Columbia, and was originally published in the Law Society of British Columbia Benchers' Bulletin (2005: No. 2 April-May). We gratefully acknowledge Mr. Bilinsky's permission to reprint his article here.

> *For the love of money*
> *People will lie, Lord, they will cheat*
> *For the love of money*
> *People don't care who they hurt or beat ...*
> *— Words and music by The O'Jays*

Fraud against lawyers and involving lawyers is on the rise across Canada and the United States - and BC lawyers have unfortunately seen their share of the problem.

Fraudsters have exploited the weaknesses in our systems and shown why we must all put into place practice safeguards to limit our exposure. There are many factors that give rise to fraud. This article does not focus on those weaknesses, but on helping a lawyer avoid becoming the next victim or pawn of a fraudster.

As reported in this Bulletin, the Benchers have recently amended the Professional Conduct Handbook to strengthen Chapter 4, Rule 6:

Dishonesty, crime or fraud
6. A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud, including a fraudulent conveyance, preference or settlement.3

Footnote
3. A lawyer has a duty to be on guard against becoming the tool or dupe of an unscrupulous client or of persons associated with such a client and, in some circumstances, may have a duty to make inquiries. For example, a lawyer should be wary of a client who:

a. seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matters, or

b. promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

Without limiting the endless ingenuity of fraudsters, here are examples of the main types of fraud that Canadian lawyers have encountered in real estate.

Use of false identity

In this circumstance, the fraudster impersonates the true owner of the property. The fraudster chooses the property, does a title search to confirm the identity details of the owner and then makes up false identity papers that match the identity of the true owner.

If the property is already mortgaged, the fraudster may forge a discharge to clear title. Then he or she applies to a new financial institution for mortgage financing equal to one-half the property value. The fraudster is counting on the financial institution doing only a basic background check since the mortgage is only 50% of the property value.

On receipt of the new mortgage funds, the fraudster may keep up the payments for a time before disappearing with the balance of the funds. The true owner is then left with the headache of trying to discharge the fraudulent mortgage. The lawyer who prepared and registered the mortgage later finds out that he or she witnessed the signature of a fraudster.

In a variation on the identity fraud, the fraudster presents to a lawyer a false agreement of purchase and sale to obtain title to a property. The fraudster then mortgages the property. Again, after a time, both the fraudster and the balance of the mortgage funds disappear. The true owner of the property finds that the property is in foreclosure and that he or she no longer holds title. The lawyer later discovers that he or she unwittingly helped a fraudster in obtaining title to the property.

A similar scenario involves the fraudster targeting property owned by a corporation. False minute books are prepared and the fraudster may impersonate one of the corporate principals. The fraudster applies to a financial institution for financing, and presents the false corporate documents in support of the mortgage application. Soon after receiving the funds, the fraudster disappears.

Another possibility is for the fraudster to impersonate both the purchaser of property and a legitimate lawyer. The fraudster enters into a real purchase and sale contract with a legitimate vendor. Using the false lawyer credentials, the fraudster opens a trust account and mocks up letterhead as if acting for the purchaser. The fraudster-as-lawyer draws up the purchase documents and applies for mortgage financing. When the mortgage funds are received, they are deposited to the false trust account. Then the fraudster and the mortgage funds disappear.

Value fraud

In this situation, back-to-back purchases of the same property are arranged from a legitimate vendor. The first purchase is for the arranged sale price —

say $300,000. Then a subsequent (fraudulent) deal (from one fraudster to another) is arranged (i.e., a "flip") for $400,000. Both purchases are set to close on the same day. The fraudster arranges for a high-ratio mortgage on the basis of the second deal. The high-ratio mortgage funds are used to close the real estate deals, since the amount of the mortgage (95% of $400,000 = $380,000) is enough to cover the deals.

The fraudsters are counting on the financial institutions not doing their full due diligence or having an on-site appraisal done of the property to verify the stated property value. Sooner or later, the balance of the mortgage funds and the fraudster disappear, leaving the bank holding a mortgage for far more than the property is worth.

A second value fraud occurs when a legitimate agreement of purchase and sale is entered into between a vendor and the fraudster, say for $350,000. The vendor and the fraudster then sign a one-page amendment that provides a credit of $50,000 against the purchase price (stated to be for repairs). The fraudster does not disclose this credit in obtaining high-ratio financing. The deal closes and the mortgage payments stop shortly thereafter. The fraudster disappears with the balance of the financing leaving the bank with a mortgage greater than the value of the property.

What to look for

There are usually indications that a fraud is in the works. Here are some of the signs to watch for:

Recent property purchase situations

- The client has recently purchased the property on an all-cash basis and is now seeking to place a mortgage against the property.
- The client has a transfer of the property but no other documents relating to the purchase of the property.
- The client does not return to the lawyer who did the purchase to do the mortgage transaction and expresses a desire for the new lawyer not to contact the former one.
- A historical title search reveals recent transfers at increasingly higher amounts, perhaps with the same lawyer on all the transactions.

Agreement of purchase and sale

- The agreement contains no handwritten amendments.
- The client is reluctant to produce identification or is uncomfortable with you making (front and back) photocopies of the identification produced by the client.

- An amendment to the agreement provides for either a reduction in the purchase price or a payment to the vendor following closing.
- The vendor acknowledges payment of a deposit that is not required by the agreement of purchase and sale.
- The deposit is payable directly to the vendor, not to a real estate agent or a lawyer.
- There is no real estate agent involved in the transaction.
- There is an agent listed in the agreement, but the lawyer does not receive any communications from the agent or the agency (such as for payment of a commission).

The transaction(s)

- The client does not have fire insurance on the home.
- The utility companies are unaware of the vendor owning the home.
- The client needs to close the transaction very quickly.
- The client is a new client and promises to refer more transactions to the lawyer.
- The client arranges the mortgage through a broker, and the brokerage fee is unusually high.
- The client is prepared to pay higher legal fees than normal for the lawyer's services.
- The purchase price is much higher than the purchase price of recent transfers of the same property.
- There are large and unusual adjustments in the Statement of Adjustments (e.g. a large credit for renovations or work to be done).
- The statement of adjustments does not reflect the terms of the agreement of purchase and sale and any amendments thereto.
- The title indicates a pattern of mortgages being registered and discharged shortly afterwards.
- All of the funds required to close the transaction come from an institutional lender.
- The name of the client in the identification produced by the client does not match the name of the client in other documents in the transaction.

Mortgage proceeds

- There is a surplus of mortgage proceeds after the closing of the transaction to be paid to the borrower or to a third party.
- The client directs part of the mortgage proceeds to third parties (e.g. off-shore recipients, currency exchange).
- The client instructs the lawyer that it is unnecessary to prepare written directions authorizing the payment of funds to third parties.
- The mortgage is a cash-back mortgage and the cash-back is the full amount of the equity in the property.
- The client directs the lawyer to rebate a portion of the mortgage surplus to the vendor.

Client is a facilitator

- A new client (facilitator) refers a number of real estate files to the lawyer, and the client, although not a party to the transaction, controls the transaction (e.g. gives instructions to the lawyer or arranges for the parties to the transaction to sign documents) and directs the parties in the transaction.
- The client does not have a personal cheque for his or her pre-authorized debit plan but provides a blank "counter cheque."
- The lawyer is instructed to pay the excess mortgage proceeds to the facilitator even though the facilitator does not appear to have an interest in the transaction.

Flip transaction

- The vendor acquires the property the same day that it is being sold for a higher purchase price (flip transaction).
- The lawyer is asked to act for both the purchaser and the vendor in the flip transaction (see Professional Conduct Handbook, Appendix 3).
- A bank loans money on the strength of the consideration contained in the flip agreement.
- The client instructs the lawyer not to disclose to the lender that the transaction is a flip or that the lender is lending money on the higher consideration.
- The transfer signed by the original vendor contains a lower consideration and is manually altered prior to closing to match the consideration set out in the agreement of purchase and sale.

Multiple transactions

- A new client begins referring a number of real estate files to the lawyer, and the same parties (purchasers and vendors) are involved over and over in transactions.
- The client indicates that he or she is in the business of renovating homes.
- The same real estate agency appears regularly on the agreements of purchase and sale.
- The mortgages arranged in these transactions are high-ratio mortgages with mortgage insurance.
- The lawyer is instructed to use the excess mortgage proceeds for the purchase of another property.

Corporations

- The original minute book for the company is not available or is incomplete.

Conclusion

Real estate fraud is but one type of fraud that can target lawyers. Upcoming Practice Tips columns will address fraud in other practice areas and fraud being perpetrated via the Internet. One thing is clear: every type of fraud involves someone motivated by the love of money who will seek to cheat by exploiting any weaknesses in our day-to-day systems.

Resources

www.lsuc.on.ca/news/pdf/convmar05_mortgage_fraud.pdf – Law Society of Upper Canada's report to Convocation on mortgage fraud.

www.lsuc.on.ca/services/pdf/july2304_fraud_indicators.pdf - Law Society of Upper Canada's practice tips on real estate transactions.

www.lsuc.on.ca/services/pdf/july2304_fraud_scenarios.pdf - Law Society of Upper Canada's real estate fraud scenarios.

www.lsuc.on.ca/services/real_estate_fraud.jsp - Law Society of Upper Canada's website on fighting real estate fraud.

I gratefully acknowledge materials prepared by LAWPRO and by the Law Society of Upper Canada that were adapted and summarized in this column, with permission, for the benefit of BC lawyers.

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New Insurance Policy Now Available

The 2005-2006 Lawyers' Professional Liability Insurance Group Policy (#18003) is now available. As there have been no significant changes to the mandatory policy and we know few of you ever review the policy, we decided not to mail a copy to everyone. If you would like to read the policy, you can download a copy from the Law Society website. Go to www.lawsociety.mb.ca, select "Member Resources", then select "Professional Liability Claims Fund". There you will be prompted to enter your "Username" (which is your e-mail address) and your "Password" (which is the number on the upper right hand corner of your Law Society membership card). Or call The Law Society of Manitoba and ask to speak to someone in the Insurance Department. Our names and direct lines are listed below. We would be happy to e-mail or mail you a copy of the new policy and answer any questions you might have about the policy and the insurance program.

Tana Christianson 926-2011
Kate Craton 926-2012
Louise Ritchie 926-2021
Bonnie Harvey 926-2026

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Outstanding Interest on Client Accounts

Pursuant to Rule 5-57 of the Rules of the Law Society of Manitoba, a lawyer is entitled to charge interest on unpaid fees, charges or dis-bursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the Income Tax Act (Canada) on the date the bill is delivered. The interest rate effective for the period October 1, 2005 to December 31, 2005 is 7%.

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Reminder to Members
Re: Contingency Fee Agreements

Many firms are overdue for updating their precedents. When entering into contingency fee agreements, please remember to attach the applicable sections from *The Legal Profession Act*. Both the form and the substance of the statute have changed.

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Interested in Hiring an Articling Student for 2006-2007?

The next Connecting Point for articling interviews is October 24 - 28, 2005. Here is some information on the process:

- Firm and organization profiles and information setting out the number of positions and the articling years in which the positions are available must be submitted to the Faculty of Law, attention Debra Giesbrecht, Career Services, Faculty of Law, 303 Robson Hall, Winnipeg, MB R3T 2N2 phone: (204) 474-9774, email: giesbred@cc.umanitoba.ca by 4:00 pm on Monday, September 26, 2005.

- Firm and organization profiles, including the number of positions and the articling years in which the positions are available will be posted on the Faculty of Law website by Monday, October 3, 2005.

- First and second interviews will take place October 24 - 28, 2005.

- More information about the process is available from Debra Giesbrecht, Career Services, Faculty of Law, 303 Robson Hall, Winnipeg, MB R3T 2N2 phone: (204) 474-9774, email: giesbred@cc.umanitoba.ca.

- Prospective Principals must be approved by the Law Society of Manitoba before students start their articles. Application forms are available from Carolyn Eyres, Administrative Registrar, Legal Studies Department, Law Society of Manitoba, 942-5571 or ceyres@lawsociety.mb.ca. An application form can also be downloaded from our website at www.lawsociety.mb.ca/pubdocs/application_principal.pdf.

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Membership Changes

The following members have voluntarily changed their status as indicated on the dates shown:

Non-Practising to Practising:
August 1, 2005 Noelia Bernardo
August 11, 2005 Pamela M. Clarke
September 2, 2005 Daniela Silaghi
September13, 2005 Kenneth E. Andrews

Inactive to Practising:
June 15, 2005 Steven R. Hyman
July 1, 2005 Elisa Schellmann
July 12, 2005 Jennifer R. Kubas
July 18, 2005 Daniel D. Kreklewich
August 1, 2005 Christopher J. Mainella
August 1, 2005 T. James Oborne
August 10, 2005 David G. Cowie
September 1, 2005 Sanjeet S. Malik
September 2, 2005 Tannis B. Jury
September 12, 2005 J.R. (Jack) Fryatt
September 13, 2005 Pearl J. Reimer
September 14, 2005 Wayne C. Rose
September 19, 2005 Mary J. Shariff

Practising to Non-Practising:
June 18, 2005 Heather M. McLaren
July 25, 2005 Glenn R. Lockhart

Practising to Inactive:
June 1, 2005 Susan J. Meighen
July 1, 2005 J. Rock Matte
July 1, 2005 Jocelyne R.M. Samborski
July 1, 2005 Tamara D. McCaffrey
August 1, 2005 Murray J. Conklin
August 9, 2005 Iain N. MacNair
August 11, 2005 Wayne D. Webster
August 26, 2005 Matthew J.E. Maslanka
September 3, 2005 Mark A. Whittam
September 13, 2005 Glenn N. Jones

Transfer from Another Province:
Christina Wasyliw of The Law Society of British Columbia was called to the Bar of Manitoba on June 30, 2005 and is now entitled to practise law in this jurisdiction, having fulfilled the requirements of Rule 5-14.

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In Memoriam

Norman Sidney Goltsman passed away on May 3, 2005 at the age of 71. Mr. Goltsman received his call to the Bar on October 1, 1958. Upon receiving his

call, Mr. Goltsman joined the firm of Cantor Matas Simkin, which would later evolve into the Simkin Gallagher firm. In 1993 he joined Taylor McCaffrey and remained with this firm until his death. Mr. Goltsman served as President and Board member of the Chai Folk Ensemble and the Bnay Abraham Synagogue, and was also a part-time cantor.

The Honourable Bruce Phipps McDonald passed away on May 10, 2005 at the age of 86. Mr. McDonald received his call to the Bar on November 5, 1945. He began his career practising law with several small firms, first in Winnipeg and then in Portage la Prairie. In 1965 he was appointed a circuit court judge of the Provincial Court, holding court in numerous rural communities in southwestern Manitoba, including Treherne, Gladstone, Portage la Prairie and Morden. Mr. McDonald retired from the court in 1994.

Marla Naomi Altman passed away on May 25, 2005 at the age of 40. Ms Altman received her call to the Bar on June 20, 1991. She began her career practising law as a sole practitioner. In January, 1992 Ms Altman joined the Department of Justice as a Crown Attorney for the Public Prosecutions Department. In June, 1992 she left practice for a period of three years. In 2001 she joined the firm of Anhang Walsh & Company, then later moved to James Richardson International as corporate counsel in 2002 where she remained until the time of her death.

Robert Henry Szewczyk passed away on May 28, 2005 at the age of 67. Mr. Szewczyk received his call to the Bar on December 23, 1963. Mr. Szewczyk practised law for most of his career in Selkirk, Manitoba, both as a sole practitioner and also as a partner in the firm known today as Szeczyk, Wasel. He was a practising member of the Law Society at the time of his death.

Firmen Julien DeVrieze passed away on June 3, 2005 at the age of 80. Mr. DeVrieze received his call to the Bar on November 5, 1956. Upon receiving his call, he joined the firm of Thompson Dorfman Sweatman, where he practised law for 35 years until his retirement in 1992.

Edward Colin Kessiloff passed away on June 22, 2005 at the age of 78. Mr. Kessiloff received his call to the Bar on December 17, 1957. Upon receiving his call, Mr. Kessiloff practised law in Manitoba for a period of five years.

Dennis William Hayes, Q.C. passed away on August 27, 2005 at the age of 80. Mr. Hayes received his call to the Bar on February 29, 1952 as a Barrister and was admitted as a Solicitor on April 28, 1953. Mr. Hayes began his career as a partner with the firm Morkin Hayes & Trudel in 1952. In 1990 he joined Kleysen Transport Ltd. as its General Counsel and remained there until his retirement in 1998. Mr. Hayes was appointed Queen's Counsel on December 24, 1963.

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